Public Prosecutor v Pujiono bin Kamsan & Ors

HIGH COURT (MUAR) — CRIMINAL TRIAL NO 45–1 OF 2001
JEFFREY TAN J
13 FEBRUARY 2003

Criminal Law *— Penal Code — s 34 — Three accused persons charged and convicted for the same offence — All pleaded guilty — Whether the court had considered the different roles and the discounts for the pleas of guilt in passing sentence*

Three accused persons were charged and convicted for committing an offence punishable under s 304(a) of the Penal Code read together with s 34 of the same Act. All three pleaded guilty. The issue was for the court to determine the appropriate sentence to be passed, taking into consideration a balance between personal circumstances and public interest.

Held:

On the facs, public interest would not permit a lenient sentence. The sentence had to reflect the gravity of the foul and gruesome deed by the accused persons. From the facts presented by the learned deputy public prosecutor and admitted by all accused persons, it was clear that OKT1 played a more prominent and active role in the foul deed. It was OKT1 who force-marched the deceased to his kongsi-house. It was OKT1 who instigated the attack on the deceased. It was OKT1 who re-apprehended the deceased. And it was OKT1 who tied the body with a nylon rope and buried the body. The culpability of OKT1 was definitely greater than the others. However, the culpability of OKT2 was lesser than the others. He only used his fists while OKT1 and OKT3 used stones to clobber the deceased. Hence, after taking into account the different roles and the discount for the plea of guilt, it was the sentence of the court, that OKT1, OKT2 and OKT3 respectively serve a term of imprisonment of 11 years, nine years and ten years, with effect from the date of arrest (see pp 479G–480B).

[Bahasa Malaysia summary

Tiga orang tertuduh telah dituduh dan disabitkan kerana melakukan satu kesalahan yang boleh dihukum di bawah s 304(a) Kanun Keseksaan dibaca bersama s 34 Akta yang sama. Ketiga-tiga orang tertuduh telah mengaku bersalah. Persoalan untuk ditentukan oleh mahkamah adalah menjatuhkan hukuman yang sesuai dengan mengambilkira satu imbangan antara keadaan-keadaan peribadi dan kepentingan awam.

Diputuskan:

Berdasarkan fakta-fakta, kepentingan awam tidak membenarkan satu hukuman yang ringan. Hukuman tersebut harus menggambarkan

keseriusan perbuatan jahat dan mengerikan ketiga-tiga tertuduh. Berdasarkan fakta-fakta yang dikemukakan oleh timbalan pendakwa raya yang bijaksana dan diakui oleh kesemua tertuduh, ia adalah jelas bahawa OKT1 memainkan peranan yang lebih ketara dan aktif dalam perbuatan jahat tersebut. Ia adalah OKT1 yang memaksa si mati berjalan ke rumah kongsi tersebut. OKT1lah yang memulakan serangan ke atas si mati. OKT1lah yang menangkap semula si mati. Dan OKT1 yang mengikat mayat tersebut dengan tali nilon dan menanam mayat tersebut. Kebersalahan OKT1 memang lebih daripada yang lain. Namun begitu, kebersalahan OKT2 kurang daripada yang lain. Beliau hanya menggunakan penumbuk beliau sementara OKT1 dan OKT3 menggunakan batu untuk memukul si mati. Justeru itu, setelah mengambilkira peranan berbeza tersebut dan peringanan kerana pengakuan bersalah, adalah hukuman mahkamah, bahawa OKT1, OKT2 dan OKT3 masing-masing menjalani tempoh penjara selama 11 tahun, sembilan tahun dan sepuluh tahun, berkuatkuasa dari tarikh tangkapan (lihat ms 479G–480B).]

Notes

For cases on Penal Code s 34, see 4 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 959–975.

Cases referred to

Fu Foo Tong & Ors v PP [1995] 1 SLR 448 (refd)
Joginder Singh v PP [1984] 2 MLJ 133 (refd)
Lee Peng Kong v PP [1986] 2 CLJ 139 (refd)
Lee Yoke Choong v PP [1964] MLJ 138 (refd)
Low Oi Lin v Rex [1949] MLJ 210 (refd)
Mohamed Jusoh bin Abdullah & Anor v PP [1947] MLJ 130 (refd)
PP v Khairuddin [1982] 1 MLJ 33 (refd)
PP v Loo Choon Fatt [1976] 2 MLJ 256 (refd)
PP v Mohd Amin bin Mohd Razali & Ors [2002] 5 MLJ 406 (refd)
PP v Mohd Nooh bin Yusof & Ors 1 *Mallal's Digest* (4th Ed, 1997 Reissue) para 2918 (refd)
PP v Nazarudin bin Ahmad & Ors [1993] 2 MLJ 9 (refd)
PP v Ramlee and another action [1998] 3 SLR 539 (refd)
PP v Ravindran & Ors [1993] 1 MLJ 45 (refd)
PR v Adam bin Mohamad 1 *Mallal's Digest* (4th Ed, 1997 Reisue) para 2908 (refd)
Reg v Murukaiyan Rasoo [1957] MLJ 26 (refd)

Haslinda bte Abu Bakar (Deputy Public Prosecutor) (Attorney-General's Chambers) for the prosecution.

Azmi bin Juewani (*Jumaini Azmi & Assoc*) for the first accused.

Mohd Yamin bin Ismail (*Mohd Yamin Ismail & Assoc*) for the second accused.

Siti Aizora bte Ahmad (*Mastura & Aizora*) for the third accused.

Jeffrey Tan J:

After the alternative charge (P3) was read and explained to them, all three accused persons pleaded guilty to the following offence:

> Bahawa kamu bersama-sama beberapa orang yang masih bebas, pada 8 Julai 2000 pada jam lebih kurang 10.30 malam di Kebun Kelapa Sawit, Kampung Ithnin Maarof, Simpang Renggam, di dalam daerah Kluang, di dalam Negeri Johor Darul Takzim, telah menyebab kematian Suhardi (K/P No: Tiada) dengan niat BERSAMA menyebabkan kecederaan-kecederaan yang boleh membawa kematian. Oleh yang demikian kamu telah melakukan satu kesalahan yang boleh di hukum di bawah s 304(a) Kanan Keseksaan dan dibaca bersama s 34 Akta yang sama.

Then after the statement of facts of the case (P4) that the learned Deputy Public Prosecutor Haslinda bte Abu Bakar ('DPP') tendered was read and explained to them, all three accused persons admitted the following: (a) at 5pm on 9 July 2000, one Lim Cheng Wah (complainant) reported to the police that he was informed by one of his employees that a body laid buried near his (complainant) factory; (b) on 9 July 2000, the police arrested all three accused; (c) on 10 July 2000, OKT1 led a police party headed by Chief Inspector Mohd Azman bin Ahmad Sapari to the oil palm estate at Kg Ithnin Maarof, Simpang Renggam, Kluang; (d) there, the police found that the earth was recently dug; (e) there, the police dug up the soil and uncovered a fully clothed body covered with a canvas; (f) the hands, legs and neck of the body were tied with a nylon rope; (g) nearby were the shoes of the deceased and some stones; (h) the body was that of one Suhardi, a citizen of the Republic of Indonesia; (i) at about 8.30pm on 8 July 2000, at the oil palm estate at Kg Ithnin Maarof, Simpang Renggam, Kluang, all three accused had bumped into Suhardi; (j) OKT1 apprehended Suhardi and brought him to his kongsi-house (quarters) located within the oil palm estate; (k) OKT1 informed his workmates, numbering about ten, in the kongsi-house, that Suhardi had robbed him; (l) thereafter, all three accused persons and others, beat Suhardi with their fists and legs until Suhardi had lost all consciousness; (m) when he regained consciousness, Suhardi attempted to escape; (n) Suhardi managed to run to about 200m from the kongsi-house; (o) all three accused persons and the others gave chase; (p) OKT1 re-apprehended Suhardi and brought Suhardi to the kongsi-house; (q) all three accused persons and others then beat Suhardi to death; (r) on that occasion, OKT1 and OKT3 had struck Suhardi with stones, while OKT2 had used his hands; (s) all three accused persons then placed the body of Suhardi onto a wheel barrow and carted the body of Suhardi to about 200m from the kongsi-house; (t) OKT1 tied the hands and legs of Suhardi with a nylon rope; (u) OKT1 and the others then dug a hole; (v) OKT1 buried the body of Suhardi into that hole; (w) Dr Shahidan Md Noor found that the cause of death was 'aspiration of gastric contents' caused by assault with a blunt object.

Pertinent to the facts of the case, the learned DPP also tendered a police report (P5), 27 photographs of the place from where the body of Suhardi was found, the objects found near the body (P6[l–27]), a sketch plan of the scene and key (P7 & P7K), post-mortem report (P8), canvas (P9), and nylon rope (P10).

Being satisfied that all three accused persons fully understood the nature and consequences of their plea, and as well admitted without any qualification the charge against them, and that the alleged offence had been disclosed, the court accepted the plea of guilt and recorded a conviction.

In mitigation, Mr Azmi bin Juewani for OKT1 related that OKT1 is a citizen of Indonesian but has a Malaysian (red) identity card, is 40 years old, has four young children and two aged parents in Indonesia, and was an estate worker. Mr Azmi also said that OKT1 had saved judicial time, that OKT1 is a first offender, and that OKT1 is contrite. Mr Azmi pleaded for a lenient sentence.

Mr Mohd Yamin bin Ismail for OKT2 said that OKT2 played a lesser role. 'He only used his fists. His degree of premeditation was lesser.' Mr Mohd Yamin said that OKT2 was also an estate worker.

Miss Siti Aizora bte Ahmad for OKT3 said that OKT3 is 25 years old, a citizen of Indonesia, is a first offender, is contrite, and was an estate worker. Miss Aizora also asked for a lenient sentence to be passed.

The learned DPP asked for an appropriate sentence to be passed. She said that the offence was a serious, and that there must be a balance between personal circumstances and public interest. She said that a life was lost.

> '... in deciding the appropriate sentence ... the first and foremost consideration is the public interest' (*R v Kenneth John Ball* 35 Cr App R 164; see also *Reg v Murukaiyan Rasoo* [1957] MLJ 26). The court shall pass sentence according to law. A 'sentence according to law' means that the sentence must not only be within the ambit of the punishable section, but it must also be assessed and passed in accordance with established judicial principles' (*PP v Jafa bin Daud* [1981] 1 MLJ 315, 316 per Mohamed Azmi, as he then was). 'The first and foremost consideration of punishment is the public interest. [Because] the object of punishment crime is ... also to deter others' (*Yap Teng Chai v PP* [1959] MLJ 205, 206; see also *Reg v WN Hammar* [1958] 24 MLJ 4).

In assessing sentence, all the circumstances of the offence should be considered (see *Low Oi Lin v Rex* [1949] MLJ 210). 'The court in fixing the punishment for any particular crime, will take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, the provocation which he received if the crime is one of violence, the antecedents of the prisoner up to the time of the sentences, his age and character' (see *Mohamed Jusoh bin Abdullah & Anor v Public Prosecutor* [1947] MLJ 130, citing *Halsbury's Laws of England* Vol 9 para 365). 'Courts are duty bound to consider all these matters before deciding upon a suitable sentences' (see *Joginder Singh v Public Prosecutor* [1984] 2 MLJ 133 per Ajaib Singh J (as he then was)). The sentences must be one appropriate to the gravity of the offence (see *Lee Yoke Choong v Public Prosecutor* [1964] MLJ 138). The sentences should reflect the seriousness of the offence (see *Public Prosecutor v Khairuddin* [1982] 1 MLJ 331).

Mitigating factors are not to be disregarded, even if the offence calls for a deterrent sentence (see *Lee Peng Kong v Public Prosecutor* [1986] 2 CLJ 139). That is not to say that 'the circumstances of the individual offender

A are more important than the protection of innocent members of the community from injury to their persons, or from risk even to their lives' (*Reg v Murukaiyan Rasoo* [1957] MLJ 26). Public interest must not be relegated to the background. 'The correct approach is to strike a balance, so far as possible, between the interest of the public and the interest of the accused' (*Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 at p 258 per Hashim B Yeop A Sani J (as he then was) and *PR v Adam bin Mohamad* 1 *Mallal's Digest (*4th Ed, 1997 Reisue) para 2908 and *Public Prosecutor v Mohd Nooh bin Yusof & Ors* 1 *Mallal's Digest (*4th Ed, 1997 Reisue) para 2918). 'A court has the discretion to be lenient and merciful provided there are extenuating circumstances *and it is in the public interest to do so*' (*Public Prosecutor v* C *Khairuddin*). (Emphasis added.)

And where two or more offenders are to be sentenced for the participation in the same offence, 'the sentence to be passed on them should be the same, unless there is a relevant difference in their responsibility for the offence or their personal circumstances' (Archbold 1993, and quoted in *Public Prosecutor v Nazarudin bin Ahmad & Ors* [1993] 2 MLJ 9). '... the D general rule is that any unjust disparity should be avoided. However, there is nothing to prevent the court from imposing a range of sentences on the accused persons if there are important considerations for so doing. A difference in the sentences imposed on co-defendants may be justified by their difference roles in the offence ...' (Archbold 2002 para 5–170). E 'The ages of the accused, the degrees of culpability and the differences in mitigation are amongst some of the important factors which warrant a disparity in sentences' (see *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45 and quoted in *Public Prosecutor v Mohd Amin bin Mohd Razali & Ors* [2002] 5 MLJ 406). A first offender may be given a lighter sentence (see *Fu Foo Tong & Ors v Public Prosecutor* [1995] 1 SLR 448), but a serious F disparity of sentences should be avoided (see *Public Prosecutor v Ramlee and another action* [1998] 3 SLR 539).

No question about it. All three accused persons had committed a most serious offence. They had taken a life. And there were no extenuating circumstances. But what is more disconcerting however is that it appears G that all three accused persons had no respect at all for life, and had no empathy at all towards their fellow human being. As a matter of fact, they literally pounded their hapless victim unto death. All three accused were brutal. No mercy whatsoever was shown to the deceased. And when they were done with their foul deed, it appears that all three accused persons then proceeded to dispose off the body of their victim like some trash. H Public interest would not permit a lenient sentence. The sentence must reflect the gravity of their foul and gruesome deed. 'From a review of some similar cases [where accused pleaded guilty to the offence], it would appear from the cases that as a general rule, the appropriate sentence for an offence under the first limb of s 304 of the Code varies from eight to ten years' (see *Public Prosecutor v Nazarudin bin Ahmad* at p 16 per Visu Sinnadurai J). But I from the facts presented by the learned DPP and admitted by all accused persons, it is clear that OKT1 played a more prominent and active role in the foul deed. It was OKT1 who force-marched the deceased to his kongsi-

house. It was OKT1 who instigated the attack on the deceased. It was OKT1 who re-apprehended the deceased. And it was OKT1 who tied the body with a nylon rope and buried the body. The culpability of OKT1 is definitely greater than the others. However, the culpability of OKT2 is lesser than the others. He only used his fists while OKT1 and OKT3 used 'batu' to clobber the deceased. Hence, after taking into account the different roles and the discount for the plea of guilt, it is the sentence of the court, that OKT1, OKT2 and OKT3 do respectively serve a term of imprisonment of 11 years, nine years and ten years, with effect from the date of arrest.

Order accordingly.

Reported by Ezatul Zuria Azhari